desired. As this provision is used in conjunction with a condition against re-marriage, it is probable that testator in each case considered only the possibility of his wife marrying again. Suppose otherwise, that the testator carefully considered the wording of his will; then he would have made this provision with notice and knowledge of the constuction of the Boddington will and it might have been his intention *not* to support the plaintiff if another husband appeared. Under either supposition a dangerous precedent is established by disregarding the adjudicated construction of a common phrase upon the speculation of the court as to the moral duty of the testator.

WITNESSES—IMPRISONMENT BEFORE TRIAL WHEN UNABLE TO GIVE SECURITY FOR APPEARANCE—RIGHT TO COMPENSATION FOR PERIOD OF DETENTION.—Plaintiff was summoned to testify before a police court upon a complaint charging another with the illegal sale of intoxicating liquor. Probable cause being found, the case was put over until the next term of the superior court and the plaintiff was ordered to recognize with sureties for his appearance as a witness at that time. The plaintiff was a stranger and through no fault of his own was unable to furnish sureties. He was thereupon put into jail and detained for a period of eighty days at the end of which time he appeared, testified before the grand jury, and was discharged. The plaintiff filed a petition against the county for eighty days' witness fees and ten miles travel. *Held,* the plaintiff was "in attendance" upon the court for the period of detention in jail without his own fault so as to be entitled to recover witness fees therefor. *Kirke* v. *Strafford County* (N. H. 1911) 80 Atl. 1046.

Statutes in the majority of the States provide that a witness shall receive fees for such time as he is in attendance upon the court, but whether or not a witness who is imprisoned to insure his appearance is in attendance within the meaning of the statute during such period of detention is a question upon which the few authorities that can be found are in direct conflict. A precedent for the ruling in the case above is found in *Higginson's Case,* 1 Cranch. C. C. 73, Fed. Cas. No. 6471, decided in 1802. In this case the court allowed daily compensation to such a person for the whole time of imprisonment. This decision was approved and followed in *Latshaw's Case,* 1 Ohio Dec. (reprints) 96; *Robinson* v. *Chambers,* 94 Mich. 471. *State* v. *Stewart,* 1 Car. Law Repos. 524; *Hutchins* v. *State,* 8 Mo. 288, and *M'Fall's Case,* 2 Mart. O. S. 171 (La.), have been cited as supporting this doctrine, but the decisions in the first two of these cases were merely to the effect that a witness residing outside the State who has been compelled to enter into recognizance for his appearance will be allowed mileage from his place of residence, while *M'Fall's Case* decided that where a witness from another State was detained he should be entitled to fees for the period of his detention but not to mileage. In *Hall* v. *Somerset County,* 82 Md. 618, the court say that the detained witness is in attendance only in case the inability to give security is due to no fault on his part. On the other hand, in conflict with the above cases, it has been held that a witness who is confined to the county jail for failure to give security for his appearance cannot recover from the county his per diem as a witness for the time he was imprisoned. *Markwell* v. *Warren County,* 53

Iowa 422; *State* v. *Walsh,* 44 N. J. L. (15 Vroom) 470; *Morin* v. *Multnomah County,* 18 Or. 163; *Sluchko* v. *County of Luzerne,* 4 Pa. Dist. R. 418; *People* v. *Pettit,* 12 N. Y. Cr. R. 284. In *State* v. *Greene,* 91 Wis. 500, the same rule was announced but in that case the case in which the witness was to testify never came on for trial.